

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YNGWIE MALMSTEEN,

Plaintiff,

v.

CLEOPATRA RECORDS, INC., BHP
MUSIC, LTD., and RON KEEL,

Defendants.

Case No. 09 CV 9056 (PG)
ECF Case

NOTICE OF MOTION BY
DEFENDANT CLEOPATRA
RECORDS, INC. AND BHP
RECORDS, INC. TO DISMISS

TO PLAINTIFF YNGWIE MALMSTEEN AND HIS ATTORNEYS OF
RECORD:

PLEASE TAKE NOTICE that defendants Cleopatra Records, Inc. (“Cleopatra”) and BHP Music, Ltd. (“BHP”) will move the court, before the Honorable Paul G. Gardephe, United States District Judge, at the United States Courthouse, Foley Square, 500 Pearl Street, Courtroom 18B, New York, New York 10007, at a time and date to be determined by the court, for an order dismissing this entire action for improper venue pursuant to Rule 12(b)(3) of the Federal Rules of Civil Procedure, or for improper process and service of process, pursuant to Rules 12(b)(4) and 12(b)(5), as well an order dismissing the sixth claim for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) or failure to state claim pursuant to Rule 12(b)(6) or both. Furthermore, Cleopatra and BHP will move for an order striking the fourth claim for relief as redundant, pursuant to Rule 12(f). This motion is brought concurrently with Cleopatra’s and BHP’s motion to transfer.

In support of this motion, Cleopatra and BHP submit the accompanying Memorandum of Law, the accompanying Declaration of S. Martin Keleti (“Keleti Decl.”), and any other evidence or argument that may be presented at a hearing on the motion, if any.

This motion follows the pre-motion conference which took place on April 12, 2010, pursuant to Rule 3.A. of the individual practices of Judge Paul G. Gardephe, dated August 24, 2009. Pursuant to Rule 3.D. of the individual practices of Judge Paul G. Gardephe, dated August 24, 2009, the moving parties request oral argument.

PLEASE TAKE FURTHER NOTICE that pursuant to the court's order of April 12, 2010 (Document number 10), any opposing affidavits and answering memoranda shall be filed served by May 17, 2010, and any reply affidavits and memoranda of law shall be served by May 24, 2010.

Dated: April 26, 2010

/s/

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